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ATTACHMENTS IN THE PEOPLE'S COURT OF BALTIMORE CITY†

By ALLAN W. RHYNHART*

The purpose of an attachment is, by seizing property of a debtor, to compel his appearance to answer the demand of the plaintiff when from nonresidence or flight he is beyond process, and, on his failure to appear, to apply such property to the just end of satisfying his debts.¹ The sequestration arises (1) from the physical seizure of chattels or personal property of the defendant; (2) bringing suit against a debtor of the defendant as garnishee; and (3) subjecting real estate or chattels real of the debtor to a lien in favor of the plaintiff. In every attachment a specific lien is created against the property attached, which continues until determination of the short note case unless the debtor appears and furnishes sufficient bond.²

Attachment and garnishment involve the exercise of special and limited statutory power, the requisites of which are jurisdictional, and even when such a power is conferred on a court of general jurisdiction, its exercise is special and statutory.³

In courts of record, an attachment proceeding consists of two cases: (1) the attachment case itself in which the preliminary seizure is made; this is an action *in rem* against the goods or credits of the debtor with the double purpose of securing a lien on the property attached and to induce the debtor's appearance to the short note case; and (2) the short note case which is a suit *in personam* against the debtor. The foundation of an attachment case is the affidavit of the plaintiff accompanied by the voucher or evidence of debt. The affidavit form used in People's Court can be used for any type of attachment on original process by striking out inappropriate allegations.

† See the Foreword to "Execution and *Fi Fa* in the People's Court of Baltimore City", *supra*, p. 203.

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¹ Gill v. Physicians' Etc. Building, 153 Md. 394, 138 A. 674 (1927).

² Union Trust Co. v. Biggs, 153 Md. 50, 137 A. 509 (1927).

³ Cole v. Randall Park Holding Co., 201 Md. 616, 95 A. 2d 273 (1953).

Several Attachments. The plaintiff may have more than one writ of attachment, although the first be still outstanding; provided, however, that there can be but one satisfaction of the debt and the court has discretion as to allowance of the costs of the subsequent attachment;⁴ so that even though one attachment is dissolved, another attachment can be filed in another jurisdiction.⁵

Partners As Plaintiffs. An attachment by a partnership in the firm name without designating the names of the members of the plaintiff's firm has been held to be fatally defective.⁶ However, see Code Supplement (1954), Article 23, Section 134, which provides that any unincorporated association or organization having a recognized group name may sue or be sued by such name in any action affecting the common property of such organization.

Attachments fall into two general categories: on original process and on judgment. The initial requirements for the different forms of attachment differ. Once these are met, the procedure in all attachment suits is similar. The plan adopted herein is to carry the procedure of each form of attachment to a common point, and then to discuss procedure applicable to all forms previously discussed.

I. JURISDICTION

The People's Court has jurisdiction to issue attachments against a non-resident or absconding debtor,⁷ for fraud⁸ or for a debtor about to abscond or a debtor returned twice *non est* upon summons issued.⁹ In each instance the sum claimed must not exceed the court's jurisdiction.¹⁰ The general law of attachment unless by express language made applicable only to courts of law is applicable to attachments issued out of the People's Court.¹¹

⁴ Code, Art. 9, Sec. 45.

⁵ *Hedrick v. Markham*, 132 Md. 160, 103 A. 98 (1918).

⁶ *Hirsh v. Thurber*, 54 Md. 210 (1880).

⁷ Code, Art. 52, Sec. 55.

⁸ Code, Art. 9, Sec. 43.

⁹ *Ibid.*, Sec. 32.

¹⁰ Charter and P. L. L. of Baltimore City (Flack, 1949), Sec. 437.

¹¹ THOMAS, Sec. 131.

II. ON ORIGINAL PROCESS

An attachment on original process is one not ancillary to a judgment or to enforce a judgment. All types of attachment (including attachments after two *non ests*) other than attachments to enforce judgments may be regarded as on original process. In this connection it may be said that philosophically speaking, an attachment after two *non ests* is ancillary to a pending suit and consequently is not an attachment on original process. However, under Article 9, Sections 25 and 32 of the Code, in an attachment after two *non ests* the defendant is regarded as a non-resident debtor. Following the mathematical theorem, "things equal to the same thing are equal to each other", an attachment after two *non ests* may be regarded and handled as an attachment on original process. In every attachment on original process there are two cases: the attachment case and the short note case.

A. *Non-Resident Debtors*

A non-resident debtor is one who has never lived in this state, or is a former resident absent from the state who has no intention of returning (though there may be a possibility or expectation of return in the indefinite future) even though he may not have acquired fixed residence elsewhere;¹² but one temporarily absent with a continuous intention to return is not deprived of his residence though his absence extends through a series of years.¹³

Corporations. As regards attachment, both foreign and domestic corporations are subject to the rule that a corporation (foreign or domestic) which has no resident agent, or, having a resident agent and there having been two unsuccessful attempts on different business days to serve process upon such resident agent, may be made a defendant in an attachment in the same manner as a non-resident individual.¹⁴ Two attempts to serve process on a resident agent

¹² 2 PoE, Sec. 506; *Risewick v. Davis*, 19 Md. 82 (1862).

¹³ *Winakur v. Hazard*, 140 Md. 102, 116 A. 850 (1922).

¹⁴ Code, Art. 23, Sec. 92(c).

of either a foreign or domestic corporation entitle plaintiff to attachment after two *non ests*.¹⁵

B. Absconding Debtors

An absconding debtor is one who shall actually run away or secretly remove himself from his place of abode, with the intention to evade payment of his just debts, or to injure or defraud his creditors.¹⁶ To support such an attachment it is necessary only that the debtor's action makes it appear that the defendant is beyond the ordinary process of the courts, with the intention of evading his creditors.¹⁷

C. Fraud

As defined by the Code,¹⁸ fraud which will support an attachment exists when the debtor is about to abscond, or the debt was fraudulently contracted or the debtor's property is or has been concealed or removed with intent to defraud creditors. In attachment for fraud the test is whether there actually was fraud at the issuance of the attachment and not whether the plaintiff has good reason to believe that fraud is being committed.¹⁹ The fraud may exist in the transaction itself²⁰ or in the conduct of the debtor in performing it or in the concealment of assets.

Fraudulently Contracted. To support an attachment for fraud there must be in the mind of the debtor at the time of the transaction an actual intention to cheat, and not the subsequent failure to perform a promise.²¹ Thus, on a motion to quash an attachment for fraud the question is not the basis of plaintiff's belief, but a consideration of the actual purpose and effect of defendant's conduct,²² so that liquidation of his assets for the benefit of his creditors (and not the personal benefit of a debtor) will not support an attachment for fraud.²³ The wrongful conversion of securities by

¹⁵ *Ibid.*

¹⁶ *Ibid.*, Art. 9, Sec. 3.

¹⁷ *Stouffer v. Niple*, 40 Md. 477 (1874); *Obrecht v. Ensor*, 162 Md. 391, 159 A. 899 (1932).

¹⁸ Code, Art. 9, Sec. 36.

¹⁹ *Williams v. General Credit, Inc.*, 183 Md. 55, 36 A. 2d 683 (1944).

²⁰ *Higgins v. Grace*, 59 Md. 365 (1883).

²¹ *Turner v. Spencer*, 136 Md. 593, 111 A. 109 (1920).

²² *Williams v. General Credit, Inc.*, *supra*, n. 19.

²³ *Lang v. Shanawolf*, 137 Md. 17, 111 A. 117 (1920).

a stockbroker will support an attachment for fraud;²⁴ and similarly an attachment for fraud may be made against a thief or embezzler.²⁵

Fraudulent Conveyances. A voluntary conveyance made by an insolvent is void as to existing creditors without regard to his actual intention and will support an attachment for fraud. Even when there is valuable consideration fraud may be found from other circumstances, such as secrecy, insolvency, etc.²⁶ The test is the practical operation and effect of the conveyance and not the motive of the grantor.²⁷ Thus, a conveyance, apparently fair, if made for the purpose of concealing the debtor's property, or to force creditors to accept a compromise is ground for an attachment for fraud.²⁸ However, when a debtor makes an assignment of all its property in good faith for the benefit of creditors no attachment for fraud will lie;²⁹ and further, the execution of a bill of sale to secure a *bona fide* creditor will not support an attachment for fraud if the object is to prefer that creditor and not the personal advantage of the debtor.³⁰ A creditor has the right to attack a fraudulent conveyance or transfer, either by attachment or by bill in equity;³¹ so that the *bona fides* of an assignment by the debtor can be inquired into under an attachment laid in the hands of the debtor as garnishee.³² If a debtor fraudulently conveys property to another the grantee may be charged as garnishee; although the fraudulent grantor himself cannot maintain a suit.³³ One who has a claim in tort, such as slander or trespass, may attack a fraudulent conveyance by attachment.³⁴

²⁴ *Turner v. Schwarz*, 140 Md. 465, 117 A. 904 (1922).

²⁵ *Downs v. Baltimore City*, 111 Md. 674, 76 A. 861 (1910).

²⁶ *Savings Bank v. Sauble*, 183 Md. 628, 39 A. 2d 862 (1944).

²⁷ *Whedbee v. Stewart*, 40 Md. 414 (1874).

²⁸ *Collier v. Hanna*, 71 Md. 253, 17 A. 1017 (1889).

²⁹ *Mackintosh v. Corner*, 33 Md. 598 (1871); *Miller v. Matthews & Kirkland*, 87 Md. 464, 40 A. 176 (1898); *Pitts Ag'l. Works v. Smelser*, 87 Md. 493, 40 A. 56 (1898).

³⁰ *Stockbridge v. Franklin Bank*, 86 Md. 189, 37 A. 645 (1897); *Johnson v. Stockham*, 89 Md. 358, 43 A. 920 (1899).

³¹ *Stockbridge v. Fahnestock*, 87 Md. 127, 39 A. 95 (1898).

³² *Fetterhoff v. Sheridan*, 94 Md. 445, 51 A. 123 (1902).

³³ *Farley v. Colver*, 113 Md. 379, 77 A. 589 (1910).

³⁴ *Cooke v. Cooke*, 43 Md. 522 (1876).

Conveyance To Spouse. A conveyance made from one spouse to another in prejudice of subsisting creditors is fraudulent³⁵ and is junior to the rights of an attaching creditor.³⁶ However, a conveyance made to a wife or son by a debtor is not unlawful provided the grantee is a *bona fide* antecedent creditor; and his other creditors may not strike down a conveyance by which a *bona fide* antecedent creditor (regardless of family relation) has received a preference.³⁷

Sales In Bulk. When a sale in bulk is made without compliance with the Code, Article 83, Sections 97-101, a subsisting creditor of the vendor may have an attachment for fraud against any property transferred.³⁸

III. THE AFFIDAVIT

Who May Make. The affidavit may be made by plaintiff's agent who need not swear that he is agent or authorized to make the affidavit.³⁹

Date. The affidavit need not be made at the time of suit, so that an affidavit made a year prior to the attachment does not affect the court's jurisdiction.⁴⁰

Irregular Affidavits. A clerical omission in the affidavit which does not create an ambiguity does not vitiate an attachment.⁴¹ However, if the substance of the affidavit is incorrect, as in swearing that two persons are jointly indebted when in fact there is but one debtor, it is fatally defective and it cannot be cured by amendment.⁴²

IV. THE VOUCHER

At this point the nature and character of the plaintiff's claim must be considered; for while the plaintiff's claim may be *ex contractu* or *ex delicto*,⁴³ at the time the affidavit

³⁵ Code, Art. 45, Secs. 1, 2.

³⁶ Ressimyer v. Norwood, 117 Md. 320, 83 A. 347 (1912).

³⁷ Long v. Dixon, 201 Md. 321, 93 A. 2d 758 (1953).

³⁸ Code, Art. 83, Sec. 98.

³⁹ Stockbridge v. Fahnestock, *supra*, n. 31.

⁴⁰ Hadden v. Linville, 86 Md. 210, 38 A. 37 (1897); Tonn v. Linders, 116 Md. 52, 81 A. 219 (1911).

⁴¹ Foran v. Johnson, 58 Md. 144 (1882); DeBebian v. Gola, 64 Md. 262, 21 A. 275 (1885).

⁴² Blair v. Winston, 84 Md. 356, 35 A. 1101 (1896).

⁴³ Code, Art. 9, Sec. 44; 2 PoE, Sec. 565.

and statement of claim are filed it is necessary that the plaintiff produce and exhibit the voucher, note or other evidence of debt by which the debtor is indebted,⁴⁴ and the procedural requirements differ with the nature of the claim. A creditor who has a liquidated claim or demand is not required to file a bond in a non-resident attachment; whereas if the claim is unliquidated then bond must be filed. The nature of the claim, as regards being liquidated or unliquidated, is supplied by the voucher or evidence of debt. Facts sufficient to support *assumpsit* will support an attachment; so that a contract need not be an express one but may be a quasi-contract.⁴⁵ The account must give the debtor specific information as to the real nature or character of the claim,⁴⁶ so that an account for merchandise may be in the form usually adopted by merchants,⁴⁷ while for money loaned, it is necessary only that the aggregate be stated.⁴⁸ Any objection to the voucher or account must be made before final determination.⁴⁹ If the account or voucher is insufficient, the attachment should be dismissed on motion to quash.⁵⁰

Alimony. Payments not made as directed may be enforced by non-resident attachment to reach property not within the jurisdiction of the equity court.⁵¹

Unmatured Claim. In attachments for fraud and against debtors who have absconded, it is not necessary that the claim have matured. In such cases the affidavit must show the date of maturity of the claim and the plaintiff is not entitled to judgment until after the maturity of the debt.⁵² The attaching creditor may bring suit against a garnishee, under circumstances where the defendant would be barred.

⁴⁴ Code, *ibid*, Sec. 4.

⁴⁵ *Downs v. Baltimore City*, 111 Md. 674, 76 A. 861 (1910); *Turner v. Schwarz*, 140 Md. 465, 117 A. 904 (1922); *Langville v. Langville*, 191 Md. 103, 60 A. 2d 206 (1948).

⁴⁶ *Hoffman v. Reed*, 57 Md. 370 (1882).

⁴⁷ *Stewart v. Katz*, 30 Md. 334 (1869).

⁴⁸ *Cox v. Waters*, 34 Md. 460 (1871); *Summers v. Oberndorf*, 73 Md. 312, 20 A. 1068 (1891).

⁴⁹ *Freidenrich v. Moore*, 24 Md. 295 (1866).

⁵⁰ *Morgan v. Toot*, 182 Md. 601, 35 A. 2d 641 (1944).

⁵¹ *Langville v. Langville*, 191 Md. 103, 60 A. 2d 206 (1948), noted 11 Md. L. Rev. 251 (1960).

⁵² Code, Art. 9, Sec. 50; *Summers v. Oberndorf*, 73 Md. 312, 20 A. 1068 (1891).

Thus, it has been held that an attachment may be laid in the hands of a garnishee before the debt owing by the latter to the debtor in the attachment case has matured.⁵³ A problem arises where the garnishee is a mortgagor, whose mortgage payments are not yet due, although the mortgage debt exists. A suggested solution of this problem is judgment in substantially the following form:

"Judgment of condemnation of credits in the garnishee due to the defendant, consisting of a debt in the amount of \$..... secured by a mortgage dated and recorded in the Land Records of Baltimore City in Liber; said debt being due and payable on, according to the terms of said mortgage."

Liquidated Damages. Liquidated damages are demands for an ascertained or ascertainable amount and the cause of action must show the liability of the defendant and the amount thereof; and not what the plaintiff assumes them to be worth.⁵⁴ The requirements are gratified by a bill or itemized account,⁵⁵ so that when the amount is for goods sold the voucher must state the items and the details of charges and payments,⁵⁶ but it is not necessary that an account show the precise amount of each item sold and delivered.⁵⁷ In other words, if the bond or account shows a *prima facie* case of indebtedness from the defendant to the plaintiff, it is a sufficient basis for attachment.⁵⁸ However, when the voucher leaves defendant uninformed as to the real nature and character of the plaintiff's claim, as when it shows a debt, but fails to show how it arose, it is insufficient to support an attachment.⁵⁹

Unliquidated Damages. Unliquidated damages are demands the amount of which cannot be ascertained by com-

⁵³ *Oden'hal v. Devlin*, 48 Md. 439 (1878).

⁵⁴ *Williams v. Jones*, 38 Md. 555 (1873); *Steuart v. Chappell*, 98 Md. 527, 57 A. 17 (1904); *Blick v. Mercantile Trust Co.*, 113 Md. 487, 77 A. 844 (1910).

⁵⁵ 2 PoE, Sec. 513.

⁵⁶ *Morgan v. Toot*, *supra*, n. 50.

⁵⁷ *Bartlett v. Wilbur*, 53 Md. 485 (1880).

⁵⁸ *Mears v. Adreon*, 31 Md. 229 (1869); *Hedrick v. Markham*, 132 Md. 160, 103 A. 98 (1918).

⁵⁹ *Burk v. Tinsley*, 80 Md. 98, 30 A. 604 (1894).

putation.⁶⁰ When damages are unliquidated, it is the safer practice to file with the affidavit a paper in the nature of a bill of particulars.⁶¹

Withdrawal Of Cause Of Action. The original cause of action in an attachment may, by order of Court, be withdrawn and a copy substituted, without vitiating the attachment.⁶²

Assignments. If an attachment is based on an assignment to the attaching creditor, the assignment must be filed.⁶³

V. STATEMENT OF CLAIM OR SHORT NOTE

While no short note case is necessary in an attachment in the People's Court,⁶⁴ it is the practice to file the equivalent in the form of a statement of claim. All that need be set out in the statement of claim is a simple, informal description of the plaintiff's demand upon which he claims liability in the defendant.

VI. SUMMONS FOR DEFENDANT

A summons must be issued for the defendant in every attachment. If there are two or more persons jointly indebted, the writ of summons must issue against all of the joint defendants as in other actions against joint defendants, although all the defendants be not amenable to the process of attachment.⁶⁵

VII. THE WRIT

In every writ of attachment there must be a *scire facias* directing the defendant to show cause why condemnation should not be had.⁶⁶

"Every attachment issued under the preceding sections shall contain a clause commanding the sheriff or

⁶⁰ *Blick v. Mercantile Trust Co.*, *supra*, n. 54.

⁶¹ 2 POG, Sec. 565.

⁶² *Bank v. Matthews*, 69 Md. 107, 14 A. 703 (1888).

⁶³ *Cumb. C. & I. Co. v. Hoffman Coal Co.*, 22 Md. 495 (1864); *Morgan v. Toot*, 182 Md. 601, 35 A. 2d 641 (1944).

⁶⁴ THOMAS, Sec. 131.

⁶⁵ *Op. cit.*, *ibid.*, 149b.

⁶⁶ *Johnson v. Lemmon*, 37 Md. 336 (1873).

other officer, at the time of executing the said attachment, to make known to each person in whose hands or possessions (*sic*) the lands, tenements, goods, chattels, and credits so attached are, if to him it shall seem meet, to be and appear on the return of such attachment before the court out of which it issued, to show cause why such lands, tenements, goods, chattels or credits so attached should not be condemned and execution thereof had and made as in other cases of recoveries and judgments given in courts of record."⁶⁷

VIII. FORMS

In the People's Court the affidavit, the writ, the statement of claim and the summons to the defendant are consolidated into a single document, as follows:

"*Affidavit*: It is hereby certified that on this day of, 19....., personally appeared before the subscriber,, a Notary Public of the State of Maryland in and for Baltimore City, and made oath (or affirmation) in due form of law that Defendant, is *bona fide* indebted unto Plaintiff, in the full and just sum of \$..... over and above all discounts and, at the same time the said affiant produced the on which the said Defendant is so indebted, and filed Plaintiff's cause of action against the said Defendant which are hereto annexed; and said affiant also made oath (or affirmation) that he is credibly informed and verily believes the said Defendant: (1) Is not a citizen of this State and does not reside therein; (2) Hath absconded; (3) Is about to abscond from this State; (4) Has assigned, disposed of, or concealed, or is about to assign, dispose of or conceal his property or some portion thereof with intent to defraud his creditors; (5) Fraudulently contracted the debt or incurred the obligation herein mentioned; (6) Has removed, or is about to remove his property or some portion thereof out of the State with intent to defraud creditors."⁶⁸

"*Writ*: To the Chief Constable of the People's Court of Baltimore City, GREETING:

⁶⁷ Code, Art. 9, Sec. 11.

⁶⁸ A bond is required when damages are unliquidated and under (3), (4), (5) and (6).

"On the foregoing affidavit and proceedings taken, you are hereby commanded to attach any of the goods, chattels, lands, tenements and credits of the said Defendant, to the value of \$....., current money, and costs of this attachment, and when you have the same so attached, or any part thereof, the same in your custody safely keep, so that you may have the same before, Chief Judge of the People's Court, on the day of next, at o'clock p.m., then and there to be condemned, according to the Act of Assembly in such case made and provided, to and for the use of said, unless the said Defendant shall come then and there in person, or by lawful attorney, and show sufficient cause to the contrary. And you are likewise commanded to make known to such person or persons in whose hands or possession the said goods, chattels and credits of the said Defendant shall be attached, that he, she or they be and appear before, Chief Judge of the People's Court, at the day, hour and place aforesaid, to show cause (If, he, she or they have any) why the said goods, chattels, lands, tenements and credits so attached should not be condemned and execution thereon had and made according to the direction of the Act of Assembly aforesaid if to him, her or them it shall seem meet; and how you shall execute this Writ make known unto, Chief Judge of the People's Court, on the day and at the place aforesaid, and have you then and there this Writ.

"Statement Of Claim Or Short Note:

Name Address (Plaintiff)

Name Address (Defendant)

"Mr. Clerk: Please docket this case in an action of The particulars of this case are The Plaintiff claims \$..... damages.

"Summons: To the Defendant: You are hereby summoned to appear for trial on before, Chief Judge of the People's Court of Baltimore City, in the suit instituted against you as shown above. If you do not appear as directed, judgment may be entered against you., Chief Constable."

At the time the writ is issued, the Clerk of Court sets up a copy of the statement of claim, affidavit and writ at the door of the People's Court.⁶⁹

IX. ATTACHMENT AFTER TWO NON ESTS

When a defendant has been twice returned *non est*, the plaintiff is entitled to an attachment⁷⁰ and there need be no special pleading. This type of attachment is ancillary to a pending suit where the defendant has not been served, so that after two returns of *non est* the defendant is regarded as a non-resident debtor and all of the requirements of a non-resident attachment affect an attachment after two *non ests*. For example, when the original suit is for liquidated damages and an attachment issues after two *non ests*, the plaintiff cannot amend his claim to one for unliquidated damages.⁷¹

"*Petition:* To the Chief Judge of the People's Court of Baltimore City. The petition of respectfully represents that on, a suit was instituted in this court by your Petitioner against the Defendant; Case No., that the Defendant has been twice successively returned *non est*, the first return of *non est* having been on and the second on That the said Defendant is indebted unto the Petitioner in the sum of \$..... Your Petitioner prays that a writ of attachment issue against the lands, tenements, goods and chattels of the said Defendant to attach for him to the value of his damages, as also the costs and charges which have already been, and which may hereafter be expended in the prosecution of said attachment.

"*Affidavit:* At the same time the Plaintiff must file an affidavit setting forth his claim together with the voucher as required in attachments against non-residents."⁷²

The form of affidavit is as follows:

"On before me, the subscriber,
....., personally appeared,

⁶⁹ People's Court Rules, Part VI, Daily Record, Dec. 28, 1953.

⁷⁰ Md. Code Supp. (1954), Art. 52, Sec. 53(f) ; Code, Art. 9, Sec. 32.

⁷¹ *Steuart v. Chappell*, 100 Md. 538, 60 A. 625 (1905).

⁷² 2 PoR, Sec. 571.

and made oath in due form of law, that is justly and *bona fide* indebted unto in the full and just sum of \$..... over and above all discounts."

Short Note. Some question exists whether a statement of claim or short note need be filed. It is customary to file one as in the case of other attachments on original process.

"..... sues
 "Mr. Clerk: Please docket this case in an action of The particulars of this case are The Plaintiff claims \$..... damages."

Writ. Upon the filing of these papers, the writ issues in the following form:

"To, Chief Constable of said City, GREETING:

"Be it remembered, that on this day of, in the year of our Lord one thousand nine hundred and, on the application of Plaintiff for a writ of attachment it appears that a certain Defendant, is justly and *bona fide* indebted unto him the said Plaintiff in the sum of dollars over and above all discounts. And at the same time said Plaintiff produced to me the on and by which the said Defendant is so indebted, which is hereto annexed. And the said Defendant having been returned twice *non est* on Therefore you are hereby commanded to attach any of the goods, chattels, lands, tenements and credits of the said Defendant, to the value of dollars, current money, and costs of this attachment, and when you have the same so attached, or any part thereof, the same in your custody safely keep, so that you may have the same before, Chief Judge of the People's Court, on next, at o'clock, then and there to be condemned, according to the Act of Assembly in such case made and provided, to and for the use of said Plaintiff unless the said Defendant shall come then and there in person, or by lawful attorney, and show sufficient cause to the contrary. And you are likewise commanded to make known to such person or persons in

whose hands or possession the said goods, chattels, lands, tenements and credits of the said Defendant shall be attached, that he, she or they be and appear before, Chief Judge of the People's Court, at the day, hour and place, aforesaid, to show cause (if he, she or they have any) why the said goods, chattels, lands, tenements and credits so attached should not be condemned, and execution thereon had and made according to the direction of the Act of Assembly aforesaid if to him, her or them it shall seem meet; and how you shall execute this writ make known unto
, Chief Judge of the People's Court on the day and at the place aforesaid, and have you then and there this writ."

Summons. With the writ, there issues also a summons to the defendant in the following form:

"To the Defendant: you are hereby summoned to appear for trial on before, Chief Judge of the People's Court of Baltimore City, in the suit instituted against you as shown above. If you do not appear as directed, judgment may be entered against you."

X. BOND

No bond is necessary to secure an attachment on a judgment or for liquidated damages against a non-resident or absconding debtor.⁷³ Similarly, no bond is required to secure an attachment against a defendant twice returned *non est* when the claim is liquidated.⁷⁴ However, a bond must be filed in all cases both *ex delicto* and *ex contractu* when the damages are unliquidated,⁷⁵ including an attachment after two *non ests*,⁷⁶ as well as in attachments for fraud.⁷⁷ In every case the penalty of the bond must be double the amount of the plaintiff's claim.⁷⁸

"*Form Of Bond:* Know all men by these presents, that we, all of Baltimore City, in the State

⁷³ THOMAS, Sec. 144.

⁷⁴ *Loc. cit.*, *supra*, n. 72.

⁷⁵ *Op. cit.*, *ibid.*, Sec. 565.

⁷⁶ *Dirickson v. Showell*, 79 Md. 49, 28 A. 896 (1894).

⁷⁷ *Op. cit.*, *supra*, n. 72, Sec. 581.

⁷⁸ Code, Art. 9, Sec. 39; *Op. cit.*, *supra*, n. 72, Sec. 565.

of Maryland, are held and firmly bound unto the State of Maryland in the full and just sum of dollars current money, to be paid to the State, its certain attorney, or assigns, to the payment whereof well and truly to be made and done we bind ourselves, our heirs, executors and administrators firmly by these presents. Whereas, the above bounden has on the day of the date hereof ordered an attachment out of the People's Court of Baltimore City, at the suit of Plaintiff, against Defendant, for the sum of dollars and cents, the same being about to be sued out of said Court. Now, the condition of the above obligation is such, that if the said Plaintiff shall prosecute said suit with effect both in the People's Court of Baltimore City and the Baltimore City Court in case of appeal or in case of failure thereof, shall well and truly pay and satisfy to the said Defendant or to any persons interested in these proceedings, all such costs in said suit and such damages as shall be awarded against the said Plaintiff, his heirs, executors, or administrators, in any suit or suits which may hereafter be brought for wrongfully suing out said attachment, the above obligation to be void, otherwise to remain in full force and effect."

XI. THE LEVY

In most cases the constable acts under the direction of the plaintiff as to the execution of the writ, as the constable is not apt to have personal knowledge of the location of the assets of the defendant. The plaintiff should supply the constable with a written direction or order specifying the property to be levied upon. However, if the constable has knowledge of property belonging to a defendant in an attachment, it is his duty to levy even though he may have no instructions from the plaintiff.⁷⁹

The form of order to the constable is:

"Please levy the within attachment on the following property of the Defendant (here list) which is located at"

When the plaintiff desires that credits belonging to the defendant be attached, his order for attachment should be:

⁷⁹ *Op. cit.*, *supra*, n. 72, Sec. 523.

"Please lay the within attachment in the hands of"

It is the duty of the constable to execute the writ by (1) a levy and seizure of goods or chattels; or (2) a levy upon real estate or chattels real belonging to the defendant; or (3) laying the writ in the hands of the person who holds in possession assets of the defendant whether the same be physical property or credits. When lands or specific goods and chattels are attached, it is the duty of the officer to serve the *scire facias* in the attachment on the person found in possession of the property attached, who should be returned as garnishee and summoned to appear, and certify such service; or, if the property is unoccupied, to make a corresponding return.⁸⁰

If property of a debtor is in the hands of a garnishee there need be no seizure: (1) if the sheriff or constable can describe it with particularity; or (2) if plaintiff secures such information by interrogatories or otherwise.⁸¹ The constable has no right to require the party in possession to become a bailee of the goods against his consent.⁸² Notice must be served on the party in whose possession the goods are found.⁸³ In attachment and in execution if the officer takes the goods of a third person, an action will lie by the owner against the officer as a trespasser, as well as against the plaintiff if he is privy to the wrong.⁸⁴ If the constable is informed by the party in possession that he has a claim of ownership or a lien upon the goods, the constable will not take them into possession, unless and until he is indemnified by the plaintiff.⁸⁵ The person in possession of property affected by an attachment, if not the debtor, should be summoned as a garnishee.⁸⁶

Force. If the constable finds the premises locked and the goods inside, prudence indicates that he should be protected

⁸⁰ HODGE & McLANE, ATTACHMENTS (1895), Sec. 101.

⁸¹ DeBearn v. DeBearn, 119 Md. 418, 86 A. 1049 (1913).

⁸² Corner v. Mackintosh, 48 Md. 374 (1878).

⁸³ THOMAS, Sec. 149c.

⁸⁴ Richardson v. Hall, 21 Md. 399 (1864); Corner v. Mackintosh, *supra*, n. 82.

⁸⁵ 2 PoE, Sec. 521.

⁸⁶ Van Brant v. Pike, et al., 4 Gill 270 (1846).

by an order of court authorizing the use of force to execute the writ. For example, a petition by plaintiff setting forth the locked condition of the premises, that some goods had been previously removed, the danger of loss because of the unattended condition of the premises, and praying for an order authorizing the removal of the locks, produced an order substantially as follows:

"Upon the foregoing petition and affidavit, it is this ordered by the Superior Court that, Sheriff, be and he is hereby authorized to remove the locks from the premises of for the purpose of levying upon the assets of the said in accordance with the attachment filed by the Plaintiff against the Defendant, and to comply with the requirements of the Sheriff that may be set by the said Sheriff."⁸⁷

A. *Property That May Be Levied Upon*

The attachment may be so served as to affect specific lands,⁸⁸ chattels or credits of the defendant.⁸⁹

Lands. If lands are attached by process out of People's Court, they must be described with sufficient accuracy for identification, and the party in possession should be notified of the attachment by the constable and summoned to appear as garnishee.⁹⁰ It is the duty of the officer, upon receipt of a writ of execution to go upon the land and levy upon it and notify the defendant in possession of the purpose of his entry. The return of the officer should show with accuracy when and upon what property he levied, and it is indispensable that the levy should be made on or before the return day of the writ.⁹¹ When the premises are occupied, the constable goes to the premises, serves upon the occupant, whoever he or she may be, a copy of the writ of attachment and a copy of the schedule on which the real estate is described and appraised. The constable makes the following return:

⁸⁷ Superior Court of Baltimore City, Docket 1951, folio 266.

⁸⁸ Code, Art. 52, Sec. 52; THOMAS, 157h.

⁸⁹ *Op. cit.*, *supra*, n. 85, Sec. 519.

⁹⁰ *Ibid.*, Sec. 520.

⁹¹ *Preissman v. Crockett*, 194 Md. 51, 69 A. 2d 797 (1949).

"Attached and appraised as per schedule. Notice served on garnishee. Garnishee summoned to appear. Copy of writ of attachment and papers, including summons, set up at the door of the People's Court Building. All on, Constable. Date of return"

If, the person whom the constable finds in possession refuses to identify himself by name, all information possible should be secured as a help to later identification, but the papers should be served even though the constable cannot ascertain the name of the person summoned as garnishee. In such event, a form of return which appears to conform to the law and the situation would be the following:

"Attached and appraised as per schedule. Notice served on a woman describing herself as sister of the Defendant, but who refused to give her name. Notice served on Mary Doe, garnishee. Garnishee summoned to appear. Copy of writ of attachment and papers, including summons, set up at the door of the People's Court Building. All on, Constable. Date of return"

When the premises are vacant, unimproved lands, the constable goes to the premises and drives a stake into the ground to which he attaches a copy of the writ of attachment and a copy of a schedule on which the real estate is described and appraised. The constable makes the following return:

"Attached and appraised as per schedule. Copy of the writ of attachment and copy of the schedule and appraisement affixed on the vacant lot Copy of writ of attachment and papers, including summons, set up at the door of the People's Court Building. All on, Constable. Date of return"

When the property is improved, but unoccupied or when service upon the occupant thereof cannot be had, the constable goes to the premises and affixes a copy of the writ of attachment and the schedule to the front door of the premises. The constable makes the following return:

"Premises found vacant. Property seized and appraised as per schedule. Copy of the writ of attachment and schedule affixed to the front door of the premises. Copy of writ of attachment and papers, including summons, set up at the door of the People's Court Building. All on, Constable.
Date of return"

Chattels. When chattels are seized under an attachment, it is the duty of the constable to take them into his custody or possession, although he may leave them at their location, placing a watchman in charge. The cost of removal to a place of safety, or the charges of the watchman, as well as storage charges, may be taxed as a part of the costs of the case. When no bond is required and when the direction to the constable is to seize specific chattels and take them into his possession, it is the practice that the plaintiff and garage or warehouseman enter into an agreement by which the seized goods are not subject to a lien for storage charges. The plaintiff is required to make such an agreement with a bailee acceptable to the Chief Constable. The agreement is incorporated in the bailee's receipt, in the following form:

"Received of, Chief Constable of Baltimore City, the following:
These are to be held by the undersigned bailee, subject to the order of the People's Court of Baltimore City in the above-captioned case. If it is ordered that the chattels be returned to either the Garnishee, Defendant, or claimant thereof, then the undersigned Plaintiff shall be responsible for all charges and costs due to the undersigned bailee and the chattels shall not be subject to any lien of said bailee. The undersigned Plaintiff agrees that he will pay all storage costs and expenses: (a) to the extent that the sales price of the chattels shall not be sufficient; or (b) if the Defendant or Garnishee or Claimant shall prevail in the above-captioned case."

Perishable Goods. When perishable goods are seized, a prompt disposal is necessary, and to await the determination of the issues would result in the spoilage or destruction of the chattels in controversy. In such instance, it is the

practice to sell the goods so seized, and to treat the proceeds as the goods themselves.

"Any of the courts of this state in which any attachment suit is pending either on original or appellate jurisdiction, or any judge thereof in vacation, may order a sale of any property which may be levied on by virtue of such attachment whenever the court or judge may deem such sale expedient and for the better promotion of the ends of justice, on such terms and notice as the order may prescribe, and such sale may be ordered before or after the return of the attachment, and the proceeds of such sale after the payment of the expenses incident thereto, shall be paid into court and deposited with the clerk, subject to the order of the court on the final decision of the case."⁹²

A sale of goods under the foregoing Code section⁹³ is an interlocutory proceeding, by which the proceeds of sale are substituted for the goods themselves,⁹⁴ so that if the defendant is paid the proceeds of sale on giving a bond, the nature of the fund remains unchanged, and does not deprive a claimant of his rights against the fund as though they were the original goods.⁹⁵

Credits. Attachment of credits or other assets of a debtor in the hands of a third person will be discussed, *infra*, under Garnishment.⁹⁶

B. Effect Of Levy

Service of the attachment upon specific property creates an inchoate lien, which becomes perfected by recovery of a judgment of condemnation, which is a judgment *in rem*.⁹⁷ By issuing an attachment on mortgaged land, the attaching creditor obtains an inchoate lien upon the equity of redemption, which entitles the holder to payment out of the surplus proceeds of the foreclosure sale.⁹⁸ When attach-

⁹² Code, Art. 9, Sec. 27.

⁹³ Md. Laws (1939), Ch. 39.

⁹⁴ O'Brien v. Norris, 16 Md. 122 (1860).

⁹⁵ Hall v. Richardson, 16 Md. 396 (1860).

⁹⁶ *Infra*, XVI, pp. 258-269.

⁹⁷ 2 PoE, Sec. 524.

⁹⁸ Union Trust Co. v. Biggs, 153 Md. 50, 137 A. 509 (1927).

ment is of a bank deposit, there is an inchoate lien on the fund from the time of the service upon the garnishee.⁹⁹

XII. THE SCHEDULE

At the time the constable attaches land or at the time he takes chattels into possession he should list the property attached on a schedule.

"Form Of Schedule: Schedule of the several goods and chattels, lands and tenements levied upon and seized on, 19....., by virtue of a writ of attachment directed to, Chief Constable of Baltimore City."

It is the practice for the constable to leave with the person from whose possession the goods are taken, not only the notice to garnishee, but also a copy of the schedule, on which is printed:

"Received of, Chief Constable, the property mentioned in this schedule, which I hold as custodian thereof.

.....
"Notice To Defendant And Garnishee: All persons having any interest, lien or claim respecting the chattels or lands listed on this schedule should be immediately notified by you of this levy.

"By the levy the property listed on this schedule has been made subject to a judicial lien and none can be disposed of except on order of Court. The Defendant may have certain exemptions available to him. Unless promptly claimed, these exemptions may be lost. The Garnishee may claim exemption on behalf of the Defendant.

"This statement is not exhaustive. It is suggested that you seek independent legal advice."

Appraisal. When an attachment issues out of a conventional court of record, it is the practice that the sheriff not only schedule the property attached but that it be appraised.¹⁰⁰ This practice of appraisal does not exist in a

⁹⁹ *Deibert v. State*, 150 Md. 687, 133 A. 847 (1926).

¹⁰⁰ *Op. cit.*, *supra*, n. 97, Sec. 521.

People's Court attachment, as by statute a constable levying a writ of *fieri facias* or attachment issued by a justice shall not summon appraisers.¹⁰¹

XIII. THE RETURN

The constable's return must be made on the return day named in the writ, which shall not be less than twenty nor more than thirty days from the date of issuance.¹⁰²

Attachment Case. On or before the return day of the writ the constable makes one of the following returns, according to his actions:

Lands — "*attached as per schedule*"

the property being described in the schedule accompanying the return.

Chattels — "*attached as per schedule*"

the schedule itself being returned with the writ. When chattels are attached in hands of a garnishee

"*attached as per schedule in the hands of
garnishee. Garnishee summoned to appear.*"¹⁰³

Short Note Case. It is likewise the duty of the constable, if possible, to summon the defendant or defendants in the short note case. The return is either *Summoned* or *Non Est* as the case may be. When appropriate, the return must affirmatively show that a copy of the statement of claim was set up at the Court House door; this portion of the return being

"copy of the statement of claim set up at the People's Court House door on"

XIV. PRIORITY

Attachments take priority according to the time of levy and not according to date of issuance,¹⁰⁴ although there is authority that if two or more attachments are delivered to

¹⁰¹ Code, Art. 20, Sec. 5c.

¹⁰² *Ibid.*, Art. 52, Sec. 56.

¹⁰³ THOMAS, Sec. 149c.

¹⁰⁴ *May, Sheriff, et al. v. Buckhannon River Lumber Co.*, 70 Md. 448, 17 A. 274 (1889); *Western Bank v. Union Bank*, 91 Md. 613, 46 A. 960 (1900).

the constable at different times to be levied upon the same property or laid in the hands of the same garnishee, they take precedence in the order of the delivery to the constable.¹⁰⁵

XV. ATTACHMENT ON JUDGMENT

An attachment on judgment is for the purpose of reaching goods or assets of the defendant in the possession of a third person, or garnishee. When a plaintiff already has his judgment, attachment is practical only to reach goods of a debtor not in his possession or ostensible ownership. In attachment on judgment, only property in the hands of a garnishee may be attached — because property in the possession of the defendant may be taken on execution. A plaintiff having a judgment may issue an attachment against the property of a defendant whether in the plaintiff's own hands or in the hands of a third person.

"Any Plaintiff having a judgment or decree in any court of law or equity in this State may, instead of any other execution, issue an attachment against the lands, tenements, goods, chattels and credits of the Defendant in the Plaintiff's own hands, or in the hands of any other person, which attachment shall contain the clause of *scire facias* required in an attachment against a non-resident or absconding debtor."¹⁰⁶

In an attachment on a judgment no affidavit, voucher or warrant is necessary.¹⁰⁷ The process of attachment on judgment is considered as an execution, and is governed by the same principles.¹⁰⁸

"Order: Mr. Clerk: Please issue an attachment on the judgment in this case and lay the same in the hands of

"Writ: To, Esq., Chief Constable of said City, GREETINGS:

"Whereas, on, Plaintiff recovered a judgment in this Court (Case No.) against a

¹⁰⁵ LATROBE, Sec. 487; Wallace v. Forrest, 2 H. & McH. 261 (1789); Ohio Brass Co. v. Clark, 86 Md. 344, 37 A. 899 (1897).

¹⁰⁶ Code, Art. 9, Sec. 29.

¹⁰⁷ Indemnity Co. v. Cosgriff, 144 Md. 660, 125 A. 529 (1924).

¹⁰⁸ Sharpless' Separator Co. v. Brillhart, 129 Md. 82, 98 A. 484 (1916).

certain Defendant, in the sum of Dollars with interest thereon from the date of said Judgment until paid, and Dollars costs, and whereas application has been made by or on behalf of the Plaintiff for the issuance of this writ. Now, therefore, you are commanded to attach any of the goods, chattels, lands, tenements and credits of the said Defendant if they can be found in the City of Baltimore to the value of the judgment debt, costs and charges aforesaid, to be condemned by this court according to the Acts of Assembly, to and for the use of the said Plaintiff; and you are likewise commanded to make known to such person or persons in whose hands or possession you shall lay this attachment, that he, she, it or they be and appear before, Chief Judge of the said People's Court of Baltimore City on, 19....., at o'clock to show cause (if any) why the goods, chattels, and credits by you attached, should not be condemned and execution thereof had and made; and how you shall execute this writ, make known unto, Chief Judge of the People's Court of Baltimore City on the day and at the place aforesaid, and have you then and there this writ."

XVI. GARNISHMENT

Whether an attachment is on judgment or original process, in order to affect property of the defendant in the hands of a third person, the person holding possession of defendant's property must be summoned as a garnishee. In attachment, when a garnishee is involved, the suit can be brought only where the garnishee resides or does business.¹⁰⁹ When a third person is found in possession of goods attached, he must be returned as a garnishee so that he may have opportunity to assert any right he may have inconsistent with a judgment of condemnation.¹¹⁰ When the goods of the defendant are in the hands of a garnishee who claims no interest in them, the goods must be taken into possession of the constable.¹¹¹ In executing the writ, the constable lays a copy of the same in the hands of as many

¹⁰⁹ *Sanitary Grocery Co. v. Soper*, 146 Md. 130, 126 A. 54 (1924); *Langville v. Langville*, 191 Md. 103, 60 A. 2d 206 (1948).

¹¹⁰ *DeBearn v. DeBearn*, 119 Md. 418, 86 A. 1049 (1913).

¹¹¹ *LATROBE*, Sec. 512.

garnishees as may be directed by the plaintiff, and each garnishee becomes a defendant in a separate case in which the proceedings, so far as he is concerned, are recorded.¹¹² So, when attachments are laid in the hands of several garnishees, the correct practice is to docket a separate suit against each garnishee.¹¹³ The garnishee must be warned of the proceeding and notified to appear to the suit and show cause why the property or credits should not be condemned for the benefit of the attaching creditor.

"Form Of Notice To The Garnishee: You will take notice, that I have this day laid an attachment in your hands attaching all the lands, tenements, goods, chattels and credits of on an attachment issued out of the People's Court of Baltimore City, at the suit of and you are hereby notified to appear before the Chief Judge of the People's Court of Baltimore City, on to show cause, if any you have, why the same should not be condemned and execution thereof had."

Who May Be Garnishee. An attaching creditor can be both plaintiff and garnishee,¹¹⁴ and the attaching creditor, in order to attack the *bona fides* of an assignment by the debtor, can make the debtor a garnishee.¹¹⁵

Trustees. Funds in the hands of a trustee under decree of a court are not liable to attachment.¹¹⁶ A court appointed trustee may be sued as garnishee, the effect of the attachment being to affect assets of the debtor in his hands *after* his account has been stated and ratified.¹¹⁷ An attachment may be laid in the hands of a trustee in equity before the final account is stated. Such an attachment operates only against credits distributable upon the ratification of the account.¹¹⁸

¹¹² *Op. cit.*, *ibid*, Sec. 499.

¹¹³ *Farmers' Bank v. Brooke*, 40 Md. 249 (1874).

¹¹⁴ *Deibert v. State*, 150 Md. 687, 133 A. 847 (1926); *Rowan v. State*, 172 Md. 190, 191 A. 244 (1937).

¹¹⁵ *Fetterhoff v. Sheridan*, 94 Md. 445, 51 A. 123 (1902).

¹¹⁶ *Cockey v. Leister*, 12 Md. 124 (1858).

¹¹⁷ *McPherson v. Snowden*, 19 Md. 197 (1862); *Groome v. Lewis*, 23 Md. 137 (1865).

¹¹⁸ *Early v. Dorsett*, 45 Md. 462 (1877).

Partners. When partners are sued as garnishees, service must be made personally upon each of the partners.¹¹⁹

A. Effect Of Garnishment

When the attachment is served upon the defendant's debtor, or custodian of defendant's property, it has the effect of subjecting all assets belonging to the defendant, in the hands of the garnishee, to the plaintiff's claim. When a person in possession of property attached is not summoned or returned as garnishee, his failure to give the defendant notice of the attachment does not make the proceedings void.¹²⁰ Attachment by garnishment affects goods of the debtor which come into possession of the garnishee after the laying of the writ, without any actual seizure thereof.¹²¹ The writ affects all property of the debtor in the hands of the garnishee at the time of the laying of the writ, and also all that may come into his hands up to the time of trial, including credits.¹²²

Warehousemen. Warehoused goods fall into two categories: (a) those for which a negotiable document of title has been issued; and (b) those for which a non-negotiable receipt or document has been issued.

Negotiable Document Outstanding — "If the goods are delivered to a bailee by the owner, or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable document of title is issued for them, they cannot thereafter, while in the possession of such bailee, be attached by garnishment or otherwise or be levied upon under an execution unless the document be first surrendered to the bailee or its negotiation enjoined. The bailee shall in no case be compelled to deliver up the actual possession of the goods until the document is surrendered to him or impounded by the court."¹²³

When negotiable receipts have been issued by a warehouseman, the goods cannot be attached by garnishment

¹¹⁹ *Wilmer v. Epstein*, 116 Md. 140, 81 A. 379 (1911).

¹²⁰ *Regester & Sons v. Woodward Iron Co.*, 82 Md. 645, 33 A. 320 (1895).

¹²¹ *Bedding Co. v. Warehouse Co.*, 146 Md. 479, 126 A. 902 (1924).

¹²² 2 PoE, Sec. 530; *Nicholson v. Crook*, 56 Md. 55 (1881).

¹²³ Code, Art. 83, Sec. 57; *Farley v. Colver*, 113 Md. 379, 77 A. 589 (1910).

or otherwise unless the receipts are surrendered,¹²⁴ as goods represented by a negotiable bill of lading are not subject to execution or attachment unless the bill be surrendered.¹²⁵ However, if the attachment is laid before the warehouse receipt is issued the warehouseman is bound as garnishee, as regards any attachable property or credits.¹²⁶

Non-Negotiable Document Of Title — "A person to whom a document of title has been transferred, but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor. If the document is non-negotiable, such person also acquires the right to notify the bailee who issued the document of the transfer thereof and thereby to acquire the direct obligation of such bailee to hold possession of the goods for him according to the terms of the document. Prior to the notification of such bailee by the transferor or transferee of a non-negotiable document of title, the title of the transferee to the goods and the right to acquire the obligation of such bailee may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to such bailee by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor."¹²⁷

Fraud. In attachment for fraud, when there is no seizure of the thing transferred but the attachment is laid in the hands of the vendee as garnishee, the sale to and possession of the vendee is conceded and the attachment affects only the proceeds of sale.¹²⁸

B. Property Which May Be Garnished

An executor or administrator may be sued as garnishee.¹²⁹ An attachment may be laid in the hands of a garnishee before the debt owing by the debtor in the attach-

¹²⁴ *Bedding Co. v. Warehouse Co.*, *supra*, n. 121.

¹²⁵ Code, Art. 14, Sec. 25; RESTATEMENT, TORTS (1934), Sec. 276.

¹²⁶ *Bedding Co. v. Warehouse Co.*, *supra*, n. 121.

¹²⁷ Code, Art. 83, Sec. 52.

¹²⁸ *Troxall v. Applegarth*, 24 Md. 163 (1866).

¹²⁹ *Hardesty v. Campbell*, 29 Md. 533 (1868); *Hohman v. Orem*, 169 Md. 634, 182 A. 587 (1936).

ment has matured.¹³⁰ An attachment may be laid on interest of the debtor in the stock of a corporation¹³¹ subject to the provisions of Code, Article 23, Sections 108-109. Equitable interests can be attached.¹³²

Safe Deposit Boxes. The right to garnish the contents of a safe deposit box depends upon and relates back to the relationship between the defendant and the safe deposit company which rents a lock box. While there are several lines of decision, the relationship in Maryland, between the lessee and lessor of a safe deposit box, is that of bailor and bailee.¹³³ This being so, the owner of the vault is the bailee of securities placed in a box in that vault by a lessee thereof.¹³⁴ Logically, therefore, the property of a debtor placed in such a box is subject to garnishment.¹³⁵ The practice in the law courts of record is that upon petition of the attaching creditor, an order is passed directing the sheriff

"to enter the safe deposit box by forceful means or otherwise, to seize the contents thereof and bring the same into court in order to enable the court to decide whether or not any of such contents are subject to condemnation, provided that if the entry be by force then the Plaintiff shall pay to the Garnishee the sum of \$..... in advance to cover the cost of entry and repair of the damage."

C. Property Which May Not Be Garnished

Custodia Legis. Property in the custody of the law cannot be attached.¹³⁶ Property of a defendant in the possession of a public official who holds it as such is immune from attachment.¹³⁷ As long as the attachment lien exists, the goods are in *custodia legis* and cannot be taken by another

¹³⁰ *Odend'hal v. Devlin*, 48 Md. 439 (1878).

¹³¹ Code, Art. 9, Sec. 18.

¹³² *Odend'hal v. Devlin*, *supra*, n. 130.

¹³³ *Takoma Park Bank v. Abbott*, 179 Md. 249, 19 A. 2d 169 (1941).

¹³⁴ *Security Storage Co. v. Martin*, 144 Md. 536, 125 A. 449 (1924).

¹³⁵ *DeBearn v. Winans*, 119 Md. 390, 86 A. 1044 (1913). See notes on garnishment of contents of a safe deposit box. 11 A. L. R. 225; 19 A. L. R. 863; 39 A. L. R. 1215; and see an opinion of Judge Niles, in *Cartier v. Cammack*, Daily Record, Dec. 2, 1952, for a discussion of the law and procedure to be followed by a sheriff in the forcing of a lock box in a case of non-resident attachment.

¹³⁶ *Horsely Co. v. Martin*, 142 Md. 52, 120 A. 235 (1923).

¹³⁷ *Hughes v. Svoboda*, 168 Md. 440, 178 A. 108 (1935).

officer under a subsequent attachment or execution; however, the same officer may schedule property already in his hands and hold the surplus for a subsequent attachment or execution.¹³⁸

Salaries of public employees or officials cannot be attached.¹³⁹ A public officer or a public institution is not subject to garnishment.¹⁴⁰ Money taken from a prisoner at the time of his arrest is in *custodia legis* and cannot be reached by attachment.¹⁴¹ Money paid into Court cannot be attached.¹⁴² Money paid into a Court and in possession of its clerk is not subject to attachment even after ratification of an auditor's account.¹⁴³ When a final audit has been approved by a Court of Chancery, funds in the hands of a trustee may be attached.¹⁴⁴

Insurance. An insurer which elects to rebuild after a loss by fire, has no credits of the insured subject to garnishment.¹⁴⁵

Joint Bank Accounts. Funds in a bank account of husband "in trust for himself and wife, joint owners, subject to the order of either, balance at the death of either to belong to the survivor" may not be attached for a debt of the husband.¹⁴⁶

Partners. A debt due a partnership cannot be taken by garnishment to pay the individual debt of one of the members of the firm.¹⁴⁷

Spendthrift Trusts. Property left in trust where the right of enjoyment is in the *cestui que* trust to the exclusion of his assignees or creditors cannot be reached by attachment.¹⁴⁸ However, a settlor cannot create a spendthrift trust for his own benefit and thus protect his property from

¹³⁸ *Ginsberg v. Pohl*, 35 Md. 505 (1872); *First Nat'l. Bk. v. Corp. Comm.*, 161 Md. 508, 157 A. 748 (1932). See also: 7 C. J. S. 258, Secs. 88 and 88(2); 4 Am. Jur. 800, Sec. 394.

¹³⁹ *Baltimore v. Root*, 8 Md. 95 (1855); *Keyser v. Rice*, 47 Md. 203 (1877).

¹⁴⁰ *Hughes v. Svoda*, *supra*, n. 137.

¹⁴¹ *Horseley Co. v. Martin*, *supra*, n. 136.

¹⁴² *Mattingly v. Grimes*, 48 Md. 102 (1878).

¹⁴³ *Dale v. Brumbly*, 98 Md. 468, 56 A. 807 (1904).

¹⁴⁴ *Williams v. Jones*, 38 Md. 555 (1873).

¹⁴⁵ *Stone v. Mutual Fire Ins. Co.*, 74 Md. 579, 22 A. 1051 (1891).

¹⁴⁶ *Fairfax v. Savings Bank*, 175 Md. 136, 199 A. 872 (1938).

¹⁴⁷ *Peoples' Bank v. Shryock*, 48 Md. 427 (1878).

¹⁴⁸ *Safe D. & T. Co. v. Ind. Brewing Asso.*, 127 Md. 463, 96 A. 617 (1916).

attachment at the suit of his creditors.¹⁴⁹ Funds in a spendthrift trust may be reached by attachment for unpaid alimony, on the theory that alimony is not a debt, but is a social duty imposed upon a husband.¹⁵⁰ However, in *Hitchins v. Safe Deposit & Trust Co. of Baltimore*,¹⁵¹ the Court of Appeals refused to permit a wife's claim under a separation agreement to reach funds in a spendthrift trust for the benefit of the husband.

Stoppage In Transitu. In a proper case, the rights of an attaching creditor may be subordinated to the rights of an unpaid vendor exercising his right to stop the goods in transit.¹⁵²

D. *Priority Between Assignee And Attaching Creditor*

An assignment is complete against creditors of the assignor who garnish after assignment and before notice of the assignment to the debtor, provided notice of the assignment is given the debtor in time to disclose the assignment in his answer to the garnishee process.¹⁵³ A valid assignment whether operative in law or in equity prevails against a subsequent attachment,¹⁵⁴ so that a *bona fide* partial assignment, even though it be equitable instead of legal, has priority over a subsequent attaching creditor.¹⁵⁵

E. *Burden Of Proof*

The burden of proof is on the attaching creditor in a suit against a garnishee to show a debt due by garnishee to the execution debtor.¹⁵⁶

¹⁴⁹ *Wenzel v. Powder*, 100 Md. 36, 59 A. 194 (1904).

¹⁵⁰ *Safe Deposit & Trust Co. v. Robertson*, 192 Md. 653, 65 A. 2d 292 (1949), noted in 10 Md. L. Rev. 359 (1949).

¹⁵¹ 193 Md. 53, 66 A. 2d 93 (1949), noted in 11 Md. L. Rev. 70 (1950).

¹⁵² *O'Brien v. Norris*, 16 Md. 122 (1860).

¹⁵³ *McDowell, Pyle & Co. v. Hopfield*, 148 Md. 84, 128 A. 742 (1925).

¹⁵⁴ *Hohman v. Orem*, 169 Md. 634, 182 A. 587 (1936).

¹⁵⁵ *Pen Mar Co. v. Ashman*, 152 Md. 273, 136 A. 640 (1927).

¹⁵⁶ *Cuera Co. v. Williams & Co.*, 145 Md. 526, 125 A. 849 (1924); *Lockerman v. Trust Co.*, 146 Md. 330, 126 A. 140 (1924).

F. Duties Of Garnishee

Although there is no formal pleading in the People's Court, it is advisable that a garnishee file an answer in writing, in the nature of a plea — because it is the duty of the garnishee to appear in the action and confess the assets in his hands, if any, or to set up the defense that he has no such property of the defendant. The form used in the People's Court is as follows:

“..... vs., Garnishee
of Defendant.
Garnishee, says that (it) holds assets belonging
to the Defendant consisting of the following (here list
assets — if none simply fill in None).”

When funds in bank are garnished, a problem may arise when the name of the depositor differs from the name of the judgment debtor. In such case, the garnishee is not called upon to determine, for example, whether Ethel Smith, its depositor is the same person as Ethelind Smythe, the judgment debtor. Assuming the bank has confessed assets according to its records, and after hearing, it is determined that Ethel Smith and Ethelind Smythe are the same person, in such event, the form of judgment is that of condemnation

“of assets in hands of the Garnishee belonging to the Defendant, Ethelind Smythe; the Defendant Ethelind Smythe and Ethel Smith having been found by the Court to be one and the same person.”

Joint Account. When the garnishee holds assets jointly owned by the defendant and another, such as a bank account, in courts of record it is customary that he file a plea in the following form:

“This Garnishee says that at the time said attachment was laid in his hands there was a checking account at the office of this Garnishee in the name of X and Y, joint owners, subject to the order of either, balance at the death of either to belong to the survivor, in which account there is a balance of \$....., which this Garnishee is holding, and that this Gar-

nishee has notified the said Defendant X, but that this Garnishee neither admits nor denies that the funds in said account are subject to the attachment laid in his hands as Garnishee of Defendant X."

Safe Deposit Box. When the garnishee is a bailee, as in case of a safe deposit box with joint access by the defendant and another, the following plea is used:

"This Garnishee says that at the time said attachment was laid in his hands this Garnishee had in its custody a locked container (Safe Deposit box No.) held in the name of the said Defendant X, with access allowed to himself or to Y or to Z but that this Garnishee has no knowledge of the contents of said locked container and, therefore, neither admits nor denies that the contents of said locked container are subject to the attachment laid in his hands as Garnishee of said Defendant X."

While there is no statutory requirement that he do so, the garnishee should promptly notify the debtor of an attachment laid in his hands.¹⁵⁷ When a garnishee knows that the object of an attachment is to reach an assigned claim, he should notify the assignee who then is bound to defend the assignment; and if the assignee fails to defend, then the garnishee is protected against the assignor, provided only that the garnishee call the attention of the court to the assignment at the time of the judgment of condemnation.¹⁵⁸ When the liability of a garnishee to the defendant depends upon a future contingency, the defense is set up by a plea of *nulla bona* and not by a motion to quash.¹⁵⁹

G. Rights Of Garnishee

An original attachment suit must be brought in the jurisdiction of the garnishee's place of business.¹⁶⁰ A garnishee may defend his own interest as a neutral in the controversy, or he may assume the character of an ally of the

¹⁵⁷ 2 PoE, Sec. 533.

¹⁵⁸ Fetterhoff v. Sheridan, 94 Md. 445, 51 A. 123 (1902).

¹⁵⁹ Indemnity Co. v. Cosgriff, 144 Md. 660, 125 A. 529 (1924).

¹⁶⁰ Sanitary Grocery Co. v. Soper, 146 Md. 130, 126 A. 54 (1924); Langville v. Langville, 191 Md. 103, 60 A. 2d 206 (1948).

defendant;¹⁶¹ so that while the garnishee is under no obligation to dispute the plaintiff's claim,¹⁶² the garnishee has the right to interpose any defense available to the defendant as well as any defense available to the garnishee,¹⁶³ and a garnishee may take advantage of any defect in the attachment.¹⁶⁴ The rights of an attaching creditor against a garnishee are no greater than those of the debtor,¹⁶⁵ so that an insurance company, sued as garnishee on a judgment against the assured, may assert any defense available to it on an action by the assured against it under the policy.¹⁶⁶ If a garnishee does not do business in Maryland, and is not subject to suit by the defendant, then it is not subject to suit in Maryland by an attaching creditor, because the rights of the attaching creditor are derivative from the defendant; and if the defendant cannot maintain a suit against the garnishee, then the attaching creditor may not maintain such a suit. The filing of a plea of *nulla bona* and answering interrogatories by such a garnishee does not confer jurisdiction upon the court in which the attachment case pends.¹⁶⁷ Garnishment does not change the nature of the contract between the garnishee and debtor, nor prevent the garnishee from performing a contract with a third person.¹⁶⁸ The drawer of a check is under no duty when garnished to stop payment thereon for the benefit of the plaintiff.¹⁶⁹ An attaching creditor is subrogated to the rights of the debtor against the garnishee, and can recover only to the extent the debtor could were he suing the garnishee.¹⁷⁰ The garnishee is entitled to set off his own claim against the debtor against attached funds of the debtor;¹⁷¹ so that when a bank is garnishee it may set off an unmatured note against the defendant's deposit.¹⁷² In an attach-

¹⁶¹ *Albert v. Albert*, 78 Md. 338, 28 A. 388 (1894).

¹⁶² *Ibid.*

¹⁶³ 2 PoE, Sec. 540.

¹⁶⁴ *Johnson v. Lemmon*, 37 Md. 336 (1873).

¹⁶⁵ *Helmer v. Geis*, 149 Md. 86, 131 A. 34 (1925).

¹⁶⁶ *Assurance Corporation v. Perkins*, 169 Md. 269, 181 A. 436 (1935).

¹⁶⁷ *Cole v. Randall Park Holding Co.*, 201 Md. 616, 95 A. 273 (1953).

¹⁶⁸ *B. & O. R.R. Co. v. Wheeler*, 18 Md. 372 (1862); *Farley v. Colver*, 113 Md. 379, 77 A. 589 (1910).

¹⁶⁹ *Amer. Agri. Chem. Co. v. Schrimger*, 130 Md. 389, 100 A. 774 (1917).

¹⁷⁰ *Lemp Brewing Co. v. Mantz*, 120 Md. 176, 87 A. 814 (1913).

¹⁷¹ *Peters v. Cunningham*, 10 Md. 554 (1857).

¹⁷² *Farm. & Merch. Bk. v. Franklin Bk.*, 31 Md. 404 (1869).

ment on judgment, neither the garnishee nor the defendant may reopen the issues in the judgment case.¹⁷³

Counsel Fee. When the plaintiff requires the garnishee to defend and judgment is rendered in favor of the garnishee to the extent of his plea confessing assets or *nulla bona*, as the case may be, then the plaintiff becomes liable for the costs of suit, and "shall be adjudged to pay to the garnishee reasonable counsel fees to be fixed by the Court".¹⁷⁴

Judgment Pleadable By Garnishee Against Defendant — "Any judgment of condemnation against a Garnishee and execution thereon, or payment by such Garnishee, shall be sufficient and pleadable in bar in any action brought against him by the Defendant in the attachment for or concerning the property or credits so condemned, even though such judgment of condemnation be afterwards reversed or set aside, unless at the time of execution made, or payment, such judgment or execution thereon shall have been stayed according to law."¹⁷⁵

The garnishee is entitled to credit only for the amount he is actually required to pay the attaching creditor; and cannot have the advantage of a compromise.¹⁷⁶ Payment of the judgment of condemnation by a garnishee is conclusive upon the defendant.¹⁷⁷

H. Liabilities Of Garnishee

If garnishee parts with possession of the defendant's goods, then he is liable for the value of defendant's property in his hands from the date of laying process in his hands to the time of trial;¹⁷⁸ so that a garnishee who holds an assignment of a judgment for security becomes liable to an attaching creditor of the assignor if he permits the assignor of the judgment to collect the same.¹⁷⁹ If the garnishee in

¹⁷³ Farley v. Colver, *supra*, n. 168.

¹⁷⁴ Code, Art. 9, Sec. 16.

¹⁷⁵ *Ibid*, Sec. 35.

¹⁷⁶ Brown v. Somerville, 8 Md. 444 (1855).

¹⁷⁷ Savin v. Bond, 57 Md. 228 (1881).

¹⁷⁸ Bedding Co. v. Warehouse Co., 146 Md. 479, 126 A. 902 (1924).

¹⁷⁹ Roberts v. First Nat. Bank, 157 Md. 36, 145 A. 220 (1929).

an attachment on a judgment has notice that the assignment of a fund in his hands was fraudulently made by defendant to an assignee to defraud defendant's creditors, and nevertheless pays this fund to the assignee, the garnishee is liable therefor to the plaintiff.¹⁸⁰ By filing pleas, a garnishee waives any defect in the service of summons, but does not thereby waive the right to a motion to quash.¹⁸¹ When a garnishee is summoned and fails to assert defenses in an attachment suit, he has no standing in equity for relief against a judgment by default, in the absence of clear proof of fraud or surprise.¹⁸²

XVII. INTERROGATORIES

Original Process. If the garnishee in an attachment on original process before a justice fails to appear to the action or denies that he possesses assets of the defendant, the plaintiff may file interrogatories.¹⁸³ Interrogatories should be filed in duplicate, one for the record of the court, and a duplicate to be served by constable upon the garnishee, who is under rule to answer them within twenty days. If the garnishee fails to reply to the interrogatories, judgment may be entered against him for the amount of the plaintiff's claim.¹⁸⁴ Interrogatories need not be answered under oath.¹⁸⁵ When interrogatories are answered by the garnishee, he is entitled to have all of them read at the trial.¹⁸⁶

"Form Of Interrogatories: To be answered by
....., the Garnishee.

"First: At the time the attachment issued in this cause was laid in your hands, to wit, on the day of, in the year nineteen hundred and, were you in any manner indebted to the Defendant named in the title to these interrogatories, or have you at any time since been, or are you now, indebted to the said or to any other person for h..... use or benefit? If yea, state

¹⁸⁰ Farley v. Colver, 113 Md. 379, 77 A. 589 (1910).

¹⁸¹ First Nat. Bank v. Equitable Soc., 157 Md. 249, 145 A. 779 (1929).

¹⁸² Ahern v. Pink, 64 Md. 161, 3 A. 32 (1885).

¹⁸³ Code, Art. 52, Sec. 58.

¹⁸⁴ *Ibid.*, Art. 9, Sec. 13.

¹⁸⁵ Wilmer v. Mann, 121 Md. 239, 88 A. 222 (1913).

¹⁸⁶ Devries v. Buchanan, 10 Md. 210 (1856).

particularly the amount of such debt, the consideration on which it was, or is founded, the time when it was contracted, and when it was or will be due or payable; and if payable to any other person for the Defendant's use, to whom it is payable.

"Second: Had you at the time the said attachment was laid in your hands, or at any time since, or have you now in your possession or under your care or trust, any goods, chattels, merchandise, property, money or effects belonging to the said or to which he ha..... or had any right, title, interest or claim either severally or jointly, or in common with another or with others? If yea, give a particular description of such property, goods, chattels, merchandise or effects, the quantity, quality and value, the place where the same is or are deposited, the nature or quantity of the right, title, interest, or claim of the said in or to the same, and the nature and extent of the liens, if any on the same.

"Third: Was there any agreement, written or verbal, made between you and the said and in existence at the time the said attachment was laid in your hands, or at any time since, in virtue of which you were or are to hold any money, effects, or property, real or personal, or any interest, right, estate or claim at law or in equity, in or to any lands, tenements, and hereditaments in trust for the said or for his use or benefit? If yea, state particularly the terms of that agreement; if in writing, produce to the court here a copy of it — state the time when it was made, the quantity, quality and value of the property on which it was, does, or is, to operate, or which you held, now hold, or are to hold in virtue thereof, and in whose hands the said agreement, if in writing, or the effects, money or property, on which it was or is to operate, was or now is.

"Fourth: Have you at any time since the said attachment was laid in your hands paid any sum of money, or delivered any goods, property or effects, to the said or to any person for his use or benefit? If yea, state the amount of money so paid, describe the kind, quantity, quality, and value of the goods, property and effects so delivered, and name the person to whom the same was so paid and delivered.

To, Garnishee. Sir: You will please take notice that a rule hath been entered at the office of the Clerk of the People's Court of Baltimore City, requiring you to answer the above interrogatories within twenty days after the service of a copy thereof, and notice of said rule."

If the garnishee does not answer the interrogatories, then the plaintiff is entitled to a judgment against the garnishee. The form of such a judgment is:

"Judgment in favor of the Plaintiff against
 Garnishee in the sum of \$..... for failure
 to answer interrogatories within twenty days of service thereof."

XVIII. DISSOLVING THE ATTACHMENT

If every defendant makes application therefor, and if a bond be filed in a sum equal to the value of the property attached or double the amount of the plaintiff's claim, then the attachment may be dissolved, and the property attached released from the effect of the attachment.¹⁸⁷ Such application must be made within six months and a day from the return day of the attachment.¹⁸⁸ The filing of a bond with a motion to dissolve does not convert an attachment from an action *in rem* to an action *in personam* as the bond only takes the place of the *res*.¹⁸⁹ When bond is given to dissolve an attachment and within four months after filing the attachment, bankruptcy proceedings affecting the debtor are instituted, the bankruptcy proceedings are a defense available to both the debtor and to the surety on the bond.¹⁹⁰

"*Form Of Bond:* Know all men by these presents: that we are held and firmly bound unto in the sum of \$..... to be paid to the said or his attorney, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves and our respective heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals

¹⁸⁷ Code, Art. 9, Sec. 19.

¹⁸⁸ 2 POF, Sec. 558.

¹⁸⁹ West v. Wood Company, 140 Md. 514, 118 A. 69 (1922).

¹⁹⁰ Crook Horner Co. v. Gilpin, 112 Md. 1, 75 A. 1049 (1910).

and dated this day of, in the year of our Lord one thousand nine hundred and
Whereas, the said Plaintiff has sued out of the People's Court of Baltimore City, an attachment against the lands and tenements, goods and chattels, rights and credits of Defendant to the value of \$..... And whereas, the Chief Constable of Baltimore City has attached the lands, tenements, goods, chattels, rights and credits, of the said Defendant as by the return to the said writ will appear; and whereas, the said Defendant is desirous to dissolve said attachment on giving bond with security according to the Code of Public General Laws of the State of Maryland. Now the condition of the above obligation is such, that if the said Defendant shall satisfy any judgment that shall be recovered in said case against him, then the said obligation shall be void, else to be and remain in full force."

XIX. QUASHING THE ATTACHMENT

An attachment may be quashed for defects apparent on the face of the proceedings¹⁹¹ such as failure to issue summons against the defendant; or for defects not apparent,¹⁹² such as a non-resident attachment brought against a person who is in fact a resident. When a motion to quash is for reasons not apparent on the face of the record, it must be under oath.¹⁹³

A motion to quash may be made by the defendant or the garnishee or by a third party claiming an interest in the attached property.¹⁹⁴ The defendant in an attachment suit may, without appearing generally, move to quash on the ground that the property seized belongs to another person;¹⁹⁵ and when either the defendant or the garnishee moves to quash, it is not a general appearance so that defendant is not subject to a judgment *in personam*.¹⁹⁶

When the court does not have jurisdiction over the garnishee, the garnishee may join with the non-resident

¹⁹¹ Coward v. Dillinger, 56 Md. 59 (1881).

¹⁹² Lambden v. Bowie, 2 Md. 334 (1852).

¹⁹³ First Nat. Bank v. Equitable Soc., 157 Md. 249, 145 A. 779 (1929).

¹⁹⁴ 2 Poe, Secs. 536-7.

¹⁹⁵ Neuman Company v. Duhadaway, 154 Md. 595, 141 A. 342 (1928).

¹⁹⁶ Albert v. Albert, 78 Md. 338, 28 A. 388 (1894).

defendant in a motion to quash, even though the garnishee may have filed a plea of *nulla bona* and answered interrogatories.¹⁹⁷

A motion to quash, based on objection to the jurisdiction can be made at any time before final disposition on appeal¹⁹⁸ as a motion to quash may be made at any stage of the proceedings.¹⁹⁹ But an objection to the sufficiency of a cause of action filed with an attachment must be made before final judgment.²⁰⁰ An attachment will not be quashed for an obvious clerical error in the affidavit, which can be supplied by the warrant.²⁰¹ An attachment will not be quashed as against property rightfully taken or credits garnished, because somebody's property has been improperly seized.²⁰² Determination of ownership of property attached in one other than the defendant may be on motion to quash either by the claimant or the defendant, in which event the burden of proof is in the person who makes the motion.²⁰³ When the defendant is returned *non est*, if the attachment is quashed, the entire proceeding, including the summons and the short note case, falls.²⁰⁴

XX. CLAIMANTS

Sections 47 to 49 of Article 9 of the Code, provide for the relief of personal property from an attachment or execution, upon the filing of a petition under oath by the claimant together with a bond in a sum equal to double the value of the property attached. These provisions do not apply to attachment proceedings before Justices,²⁰⁵ nor to the People's Court. They do not repeal the prior law,²⁰⁶ but enlarge the rights of owners of property attached; and the right of a claimant to prove ownership of property wrong-

¹⁹⁷ *Cole v. Randall Park Holding Co.*, 201 Md. 616, 95 A. 2d 273 (1953).

¹⁹⁸ *Bruce, et al. v. Cook*, 6 G. & J. 346 (1834); *Gill v. Physicians' Etc. Building*, 153 Md. 394, 138 A. 674 (1927).

¹⁹⁹ *Coward v. Dillinger*, 56 Md. 59 (1881); *cf. Sugar Products Co. v. Kitzmiller*, 137 Md. 647, 113 A. 345 (1921).

²⁰⁰ *DeBearn v. DeBearn*, 119 Md. 418, 86 A. 1049 (1913).

²⁰¹ *DeBebian v. Gola*, 64 Md. 262, 21 A. 275 (1885).

²⁰² *Kilpatrick v. O'Connell*, 62 Md. 403 (1884).

²⁰³ *Morgan v. Toot*, 182 Md. 601, 35 A. 2d 641 (1944).

²⁰⁴ *Randle v. Mellen*, 67 Md. 181, 8 A. 573 (1887).

²⁰⁵ THOMAS, Sec. 153.

²⁰⁶ *Haid v. Haid*, 167 Md. 493, 175 A. 338 (1934).

fully seized under an attachment or execution, as the same existed prior to Sections 47 and 48 of Article 9, remains unimpaired.²⁰⁷

Attachment proceedings cannot divest the true owner, a stranger to the suit, of his property. Independently of Article 9, Sections 47-49, he may intervene by a motion to quash,²⁰⁸ as any third person claiming property and having notice of the attachment, has the right on the return day of the attachment to appear and move to quash the attachment, or to have his title tried.²⁰⁹ Such third person may file as a claimant, but is not bound to do so, and may bring replevin to repossess his property.²¹⁰ However, the owner of goods taken in execution or attachment against a stranger, not the owner of the goods, may not bring replevin against the sheriff, as the goods are in *custodia legis*.²¹¹ A claimant may both intervene in the attachment case and sue in trespass, as the remedies are cumulative;²¹² so that a third person whose goods are seized is not bound to intervene but is entitled to bring action in trespass as soon as the wrong is done.²¹³ Intervention in the attachment case does not deprive the claimant of his right to sue for the unlawful seizure and detention of his property.²¹⁴ If property belonging to a husband and wife is attached for a debt of the husband, the wife may appear as claimant.²¹⁵ A claimant of money or credits garnished has the right to come in and prove his ownership to the same extent as a claimant of a specific chattel.²¹⁶

"Form Of Claim To Property Attached: In this case, the said Claimant, claims the in the schedule mentioned and says that the Plaintiff should not have judgment of condemnation against

²⁰⁷ *Neuman Company v. Duhadaway*, 154 Md. 595, 141 A. 342 (1928); *Gilpin v. Somerville*, 163 Md. 40, 161 A. 272 (1932); *Haid v. Haid*, *ibid.*

²⁰⁸ *Clarke v. Meixsell*, 29 Md. 221 (1868).

²⁰⁹ *Ranahan v. O'Neale*, 6 G. & J. 298 (1834); *LATROBE*, Sec. 515.

²¹⁰ *Rowan v. State*, 172 Md. 190, 191 A. 244 (1937).

²¹¹ *B., C. & A. Ry. Co. v. Klaff*, 103 Md. 357, 63 A. 360 (1906).

²¹² *Trieber v. Blocher*, 10 Md. 14 (1856); *Richardson v. Hall*, 21 Md. 399 (1864).

²¹³ *Richardson v. Hall*, *ibid.*

²¹⁴ *Clark v. Dressel*, 56 Md. 147 (1881).

²¹⁵ *Haid v. Haid*, *supra*, n. 206.

²¹⁶ *Kean v. Doerner*, 62 Md. 475 (1884).

them as the property of the said Defendant, because (stating the particular reasons briefly).''²¹⁷

When a claim is so filed, a case is docketed on behalf of the claimant against the plaintiff.²¹⁸ Filing such a claim does not free the property until the question of title is determined.²¹⁹ When a claim is filed, the claimant becomes a defendant in the attachment case, leaving the burden of proof on the attaching creditor as it rested before the intervention.²²⁰ Even though possession in the defendant is some evidence of title, although incomplete, a claimant does not carry the burden of proof.²²¹ This is not the rule in a court of record, when claimant proceeds under Article 9, Section 47 of the Code.²²²

XXI. DEFENDANTS IN ATTACHMENT

The defendant may defend the short note case, leaving the attachment standing; or dissolve the attachment by giving bond, thus releasing the property attached. If the attachment was irregularly issued, then defendant can move to quash.²²³

Partnerships. When an attachment for fraud issues on a partnership debt and partnership assets are attached, the appearance of one of the partners contesting the claim is sufficient to bind firm assets, even though the other partner was out of the State and *non est*.²²⁴ When one of two partners resides within the jurisdiction of a court issuing an attachment for fraud, the attachment is valid even though one partner cannot be served.²²⁵ Partnership property cannot be attached for the personal debt of one of the partners.²²⁶

²¹⁷ THOMAS, Sec. 153.

²¹⁸ LATROBE, Sec. 520.

²¹⁹ 2 POE, Sec. 562.

²²⁰ *Gilpin v. Somerville*, 163 Md. 40, 161 A. 272 (1932); *Morgan v. Toot*, 182 Md. 601, 35 A. 2d 641 (1944).

²²¹ *Lemp Brewing Co. v. Mantz*, 120 Md. 176, 87 A. 814 (1913).

²²² *Ibid.*

²²³ *Sugar Products Co. v. Kitzmiller*, 137 Md. 647, 113 A. 345 (1921).

²²⁴ *Thomas v. Brown & Lowndes*, 67 Md. 512, 10 A. 713 (1887).

²²⁵ *Collier v. Hanna*, 71 Md. 253, 17 A. 1017 (1889).

²²⁶ *Townsend v. Appel Sons, Inc.*, 164 Md. 255, 164 A. 679 (1933).

XXII. AMENDMENT

Any objection to the sufficiency of the papers in an attachment must be made before final judgment, in which event the plaintiff has the opportunity to correct the defect by appropriate amendment.²²⁷ All papers in an attachment case may be amended to the same extent as the proceedings in any other action,²²⁸ but the amendment must be made prior to judgment.²²⁹ If no voucher is filed, this can be cured by amendment.²³⁰ The voucher may be amended,²³¹ so that a plaintiff in attachment may amend the voucher to reduce the amount of his claim,²³² or amend from "Estate of" to make the individual Executors plaintiffs.²³³ A clerical error in the writ may be amended.²³⁴ The return may be amended before judgment to show what the officer actually did, provided rights of third parties have not intervened.²³⁵ The bond in attachment can be amended under Article 9, Section 28.²³⁶ While the *ad damnum* clause in the declaration may be amended to increase the same, the bond must be always double the amount of the claim — so that an amendment of the declaration calls for an appropriate amendment of the bond.²³⁷

XXIII. THE TRIAL

In attachments, excepting on judgment, if the defendant appears the proper course is to try first the short note case. The validity of a judgment so rendered in the short note case is one *in personam* and is unaffected by the regularity of the attachment case.²³⁸ If the attaching creditor is able to prove but part of his claim, the proceedings are not thereby vitiated.²³⁹

²²⁷ Sugar Products Co. v. Kitzmiller, *supra*, n. 223.

²²⁸ Kendrick & Roberts v. Warren Bros., 110 Md. 47, 72 A. 461 (1909).

²²⁹ Main v. Lynch, 54 Md. 658 (1880).

²³⁰ Langville v. Langville, 191 Md. 103, 60 A. 2d 206 (1948).

²³¹ Morgan v. Toot, 182 Md. 601, 35 A. 2d 641 (1944); Code, Art. 9, Sec. 28.

²³² Kendrick & Roberts v. Warren Bros., *supra*, n. 228.

²³³ Booth v. Callahan, 97 Md. 317, 55 A. 625 (1903).

²³⁴ First Nat. Bank v. Weckler, 52 Md. 30 (1879).

²³⁵ Main v. Lynch, *supra*, n. 229.

²³⁶ Gill v. Physicians' Etc. Building, 153 Md. 394, 138 A. 674 (1927).

²³⁷ Lanasa v. Beggs, 159 Md. 311, 151 A. 21 (1930).

²³⁸ Philbin v. Thurn, 103 Md. 342, 63 A. 571 (1906).

²³⁹ White v. Solomonsky, 30 Md. 585 (1869).

XXIV. JUDGMENT IN ATTACHMENT

The judgment may be a judgment *in rem*, condemning the specific property attached, or a judgment *in personam* against the garnishee for the amount of credits found to be in his hands.²⁴⁰ If specific property is in the hands of the garnishee, there may be condemnation thereof and the action is *in rem*, as the judgment is not against the garnishee but of the particular lands and chattels attached.²⁴¹ The lien of a judgment of condemnation is a specific one which relates back to the time the attachment was laid²⁴² and ripens into legal title in the purchaser at the sale.²⁴³ Thus the purchaser under a sale pursuant to a *fi fa* on condemnation has a *prima facie* case of right of possession, but he does not gain title to the property of a stranger to the attachment.²⁴⁴ If a judgment of condemnation exceeds the amount named in the writ, the error can be corrected by filing a *remittitur*.²⁴⁵ Limitations begin to run on a judgment of condemnation from its date.²⁴⁶ While no judgment of condemnation of assets in the hands of a garnishee may be entered without proof of assets,²⁴⁷ in attachment on original process pursuant to a People's Court judgment may be entered against a garnishee if he fails to answer interrogatories.²⁴⁸ The cost of a corporate surety bond may be recovered in a garnishee case.²⁴⁹

Judgment of condemnation need not value the property condemned when the designated chattels are attached in the garnishee's hands.²⁵⁰ If the garnishee relinquishes possession, then a judgment *in personam* may be recovered against him for the value of the property.²⁵¹ If the property in the hands of the garnishee consists entirely of credits,

²⁴⁰ 2 Pom, Sec. 545.

²⁴¹ *Corner v. Mackintosh*, 48 Md. 374 (1878).

²⁴² *Rowan v. State*, 172 Md. 190, 191 A. 244 (1937).

²⁴³ *Cockey v. Milne*, 16 Md. 200 (1860).

²⁴⁴ *Rowan v. State*, *supra*, n. 242.

²⁴⁵ *DeBearn v. DeBearn*, 119 Md. 418, 86 A. 1049 (1913).

²⁴⁶ *Johnson v. Foran*, 59 Md. 460 (1883).

²⁴⁷ *Wilmer v. Pica*, 118 Md. 543, 85 A. 778 (1912).

²⁴⁸ Code, Art. 52, Sec. 58.

²⁴⁹ *Amer. Surety v. Kitzmiller*, 144 Md. 163, 125 A. 44 (1923).

²⁵⁰ *West v. Wood Company*, 140 Md. 514, 118 A. 69 (1922).

²⁵¹ *Rowan v. State*, 172 Md. 190, 191 A. 244 (1933).

then the plaintiff is entitled to a judgment *in personam* against the garnishee to the extent of the credits owed by him to the defendant.²⁵²

Defendant's Judgment. Defendant is entitled to the value of, or damage to, goods actually seized, as well as the actual ascertainable loss resulting from interference with the operation of his business, but is not entitled to damages to credit.²⁵³ Judgment in the short note case in favor of the defendant, by operation of law dissolves the attachment.²⁵⁴

"*Form Of Judgment:*
 Plaintiff vs. Garnishee of Defendant.
 Attachment non-resident. Writ issued
 Ruled to Plaintiff appeared. Defendant failed to appear Garnishee confessed assets of the Defendant in its hands consisting of credits in the amount of \$..... Trial had. Defendant found to be indebted to Plaintiff in the sum of \$..... Judgment of condemnation, to the extent of \$..... and \$..... costs, rendered in the above-entitled case this day of, 19....., in favor of the Plaintiff against the assets of the Defendant in the hands of the Garnishee, consisting of and the Plaintiff to have execution hereof in pursuance of the provisions of Article 52, Section 60 of the Annotated Code of Maryland."

In attachment on original process (for example, for fraud or absconding debtor) the form of judgment when defendant has been summoned (subject to minor variations according to circumstance) is as follows:

"Plaintiff appeared. Defendant did not appear. Judgment in favor of Plaintiff for \$....., plus \$..... costs. Judgment that the goods and chattels attached be condemned according to the Act of Assembly in such case made and provided, to satisfy as well the debt, damages and costs in the suit specified, to wit: \$....., as the sum of \$..... costs in this case."

²⁵² 2 POE, Sec. 522.

²⁵³ *Sterling v. Marine Bk. of Crisfield*, 120 Md. 396, 87 A. 697 (1913).

²⁵⁴ *Higgins v. Grace*, 59 Md. 365 (1883).

Where the defendant is summoned or appears and submits to the jurisdiction, then, if plaintiff proves the elements of his case, the judgment is double-barrelled: (a) a personal judgment, just the same as any other judgment; and (b) a judgment of condemnation against the property attached. Where the defendant is not summoned nor appears and submits to the jurisdiction, then the jurisdiction is *in rem* and is confined to the goods attached and no personal judgment can be entered.

Lands. The heading is the same as in a judgment of assets confessed. Then:

"Copy of writ set up at door of People's Court Building on, Levy made on, and copy of writ and schedule affixed to the premises,, Baltimore City, Maryland. Plaintiff appeared. Defendant failed to appear. Trial had. Defendant found to be indebted to Plaintiff in the sum of \$..... Judgment of condemnation to the extent of \$..... and \$..... costs, rendered in the above entitled case this, in favor of the Plaintiff against the right, title and interest of the Defendant, in a certain lot of ground, in Baltimore City situated (giving a description of the property)."

The conclusion is the same as in the previous form.

XXV. EXECUTION

If the judgment be one *in personam* against the garnishee it may be executed by a writ of *fi fa* or attachment. If the judgment is *in rem* against specific property attached, then the execution is by *fi fa* on condemnation.²⁵⁵

XXVI. WRITS OF EXECUTION

(See Executions)²⁵⁶

XXVII. BOND PRIOR TO EXECUTION

Before execution of any judgment of condemnation, the plaintiff shall give bond of at least double the amount of the

²⁵⁵ DeBearn v. Winans, 119 Md. 390, 86 A. 1044 (1913).

²⁵⁶ *Supra*, p. 203, *et seq.*

judgment, conditioned that he will pay such damages as may be awarded the defendant if the defendant within six months and a day appears before the court and shows that the debt ought not be paid or that the defendant was not indebted to the plaintiff when the attachment issued.²⁵⁷ If six months and a day have elapsed from the date of judgment, no bond is necessary.²⁵⁸ Plaintiff may issue execution on a judgment of condemnation as soon as he obtains his judgment, provided he files the requisite bond and at any time within twelve years from its date.²⁵⁹

"Form Of Bond Prior To Fi Fa On Condemnation — Chattels: Know all men by these presents, that we,, all of Baltimore City, State of Maryland, are held and firmly bound unto, in the sum of dollars, for the payment whereof we bind ourselves, jointly and severally by these presents, signed and sealed this day of, 19..... Whereas, in a case of attachment in the People's Court of Baltimore City, wherein is Plaintiff and Defendant, the following goods and chattels which were attached, to wit; and were on by said Court condemned as the goods and chattels of the said Defendant, for the use of the said Plaintiff, according to the Act of Assembly in such case made and provided. And whereas, upon the request of the said Plaintiff, the said court is about to award an execution of *fiери facias* upon said judgment of condemnation for the use of the said Plaintiff, to satisfy the debt alleged in the proceedings in said attachment to be due from the Defendant to the Plaintiff, and dollars cost of said attachment, and the additional costs of said execution. Now the condition of the above obligation is such, that if the said Plaintiff shall and do well and truly make restitution to the said Defendant of the goods and chattels, so aforesaid condemned, or the value thereof, and shall pay also such damages as may be awarded to the said Defendant, if the said Defendant shall at any time within six months and a day from being the date of issuing said attachment,

²⁵⁷ Code, Art. 52, Sec. 60.

²⁵⁸ LATROBE, Sec. 656. While Latrobe says 12 months, the statute, *ibid*, says 6 months, and a day.

²⁵⁹ Johnson v. Foran, 59 Md. 460 (1883).

come before the said court, either in person or by his agent, and make it appear that said Plaintiff hath been satisfied, and paid the said debt, or show that it ought not to be paid, or show that the said Defendant was not indebted to the said Plaintiff at the time of the issuing of said attachment, then the above obligation is to be void, otherwise to remain in full force and virtue in law.

"Credits: Know all men by these presents, that we,, all of Baltimore City in the State of Maryland, are held and firmly bound unto, in the sum of dollars, for the payment whereof we bind ourselves, jointly and severally by these presents, signed and sealed this day of, 19..... Whereas, in a certain case of attachment in the People's Court of Baltimore City, wherein was Plaintiff and Defendant, certain rights and credits to the value of dollars, which were attached in the hands of, as Garnishee, were condemned as the proper rights and credits of the said (Defendant) to the use of said (Plaintiff), according to the Code of Public General Laws of the State of Maryland, in such cases made and provided; and whereas, at the request of the said Plaintiff, the Court is about to award upon said judgment of condemnation an execution against said Garnishee for the use of the said Plaintiff for the sum of dollars, the value of the said credits so condemned, as aforesaid, in payment (or part payment) of the debt alleged in said attachment to be due from the Defendant to the Plaintiff and \$..... cost of said attachment, and the additional costs of said execution. Now the condition of the above obligation is such, that if the said Plaintiff shall and do well and truly make restitution to the said Defendant of the credits so aforesaid condemned, or the value thereof, and shall pay also such damages as may be awarded to the said Defendant, if the said Defendant shall at any time within six months and a day from, being the date of issuing said attachment, come before the said Court, either in person or by his agent, and make it appear that said Plaintiff hath been satisfied, and paid the said debt, or show that it ought not to be paid, or show that the said Defendant was not indebted to the said Plaintiff at the time of the issuing of said attachment, then the above obligation is to be void, otherwise to remain in full force and virtue in law."